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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 DAVID L. LAIL (DECEASED),

12 Plaintiff,

13 v.

14 MICHAEL ASTRUE, Commissioner of Social
Security,

15 Defendant.

Case No. C06-5317 FDB

ORDER FOR ATTORNEY FEES
PURSUANT TO 42 U.S.C. § 406(B)

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17 This matter comes before the Court on Plaintiff's motion for authorization of attorney fees
18 under 42 U.S.C. § 406(b). Counsel for Plaintiff seeks a gross fee award of \$8,157.45. The
19 Commissioner has filed a response to Plaintiff's motion indicating Defendant has no objection to
20 the fee request.

21 Attorney's fees may be awarded to a successful social security claimant's lawyer for his or
22 her representation before a court pursuant 42 U.S.C. §§ 406(b); Straw v. Bowen, 866 F.2d 1167 (9th
23 Cir. 1989). Plaintiff must apply to the Social Security Administration for an award of fees for
24 representation at the administrative level. 42 U.S.C. § 406(a); Stenswick v. Bowen, 815 F.2d 519
25 (9th Cir. 1987). Previously, this Court awarded Plaintiff's counsel \$3,814.20 pursuant to the Equal

1 Access to Justice Act (EAJA). Plaintiff's counsel now petitions for a gross fee of \$8,157.45.

2 Under 42 U.S.C. § 406(b)(1)(A) the court can only award fees up to the 25 percent withheld
3 from the past-due benefits. This 25 percent limit applies to the total of EAJA and § 406(b) fees
4 combined. See, Morris v. Social Sec. Admin., 689 F.2d 495, 497-98 (4th Cir. 1982); Webb v.
5 Richardson, 472 F.2d 529, 536 (6th Cir. 1972); Dawson v. Finch, 425 F.2d 1192, 1195 (5th Cir.
6 1970).


7 Plaintiff was awarded \$38,573.00 in past due benefits. Twenty-five percent of past due
8 benefits is \$9,643.25. The Court concludes that the attorney's fees sought by counsel are reasonable
9 within the meaning of § 406(b). Plaintiff's counsel is entitled to a gross attorney fee of \$8,157.45.
10 Subtracting the \$3,814.20 previously awarded EAJA fees, counsel is entitled to a net award of
11 \$4,343.25.

12 ACCORDINGLY;

13 IT IS ORDERED:

14 Plaintiff's Motion for an Award of Attorney's Fees [Dkt #33] is **GRANTED**. Plaintiff's
15 counsel is awarded 42 U.S.C. § 406(b) gross attorney fees in the sum of \$8,157.45. The
16 Commissioner is directed to subtract the \$3,814.20 previously awarded EAJA fees and send to
17 Plaintiff's counsel an award of \$4,343.25., minus any applicable processing fees as allowed by
18 statute.

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20 DATED this 29th day of April, 2009.

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25 FRANKLIN D. BURGESS
26 UNITED STATES DISTRICT JUDGE